FINAL
MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Watson Park Remedial Action Plan and Master Plan

PROJECT FILE NUMBER: PP07-130

PROJECT DESCRIPTION: The proposed project includes two actions described in the Remedial Action Plan (RAP) and Watson Park Master Plan (Master Plan). The RAP proposes to place a minimum three-foot clean soil cap over soils that contain burn ash/dump debris at Watson Park and a portion of Empire Gardens Elementary School in order to protect public health and the environment. Once site soils have been capped, the Watson Park Master Plan would be implemented. The Master Plan proposes to construct new and reconfigured recreational facilities at the park to provide community and neighborhood recreational services. These two actions represent the "proposed project" evaluated in the CEQA Initial Study/Mitigated Negative Declaration.

PROJECT LOCATION & ASSESSORS PARCEL NO.: Watson Park, a City of San Jose park located at Taylor Street and N 22nd Street; APNs 249-64-010, 249-21-005

COUNCIL DISTRICT: 3

APPLICANT CONTACT INFORMATION: Jan Palajac, Sr. Landscape Architect City of San Jose, Departments of Public Works (408) 535-8408 (Remediation Plan) and Marybeth Carter, Sr. Landscape Architect, Department of Parks, Recreation and Neighborhood Services (408) 793-4183 (Master Plan).

FINDING
The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the CEQA initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

AESTHETICS – The project will alter the existing visual character of the site through grading and tree removal. However, the park is in an urban setting and implementation of the Master Plan will

restore trees and other vegetation on the site and enhance views of Coyote Creek. Impacts to the visual character of the site will be less-than-significant, therefore no mitigation is required.

AGRICULTURE RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

AIR QUALITY – Earthmoving and other grading could result in potentially significant air quality impacts. Implementation of the following air quality mitigation measures will reduce those impacts to less than significant levels:

Mitigation Measure AIR-1: The construction contractor shall implement the following measures at the park during the site remediation (RAP) and site preparation and construction (Master Plan) phases of the project:

- Water all active construction sites at least twice daily.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.
- Apply water three times daily or apply non-toxic soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
- Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
- Hydroseed or apply non-toxic soil stabilizers to inactive construction areas (previously disturbed areas inactive for ten days or more).
- Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
- Limit traffic speeds on unpaved roads to 15 miles per hour.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.
- Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 miles per hour.
- Minimize idling time (to 5 minutes or less).
- Maintain properly-tuned equipment.

BIOLOGICAL RESOURCES – The project could result in significant biological impacts. The following mitigation measures will reduce those impacts to less than significant levels:

Mitigation Measure BIO-1: The City shall implement the following measures to avoid or minimize potential impacts to steelhead and, if present, Western Pond Turtle:

- All construction activities in or adjacent to Coyote Creek (i.e., below top-of-bank) shall be conducted between June 15 and October 15, when steelhead are less likely to be migrating through the project area. Should the contractor demonstrate a need to conduct activities outside this time period, the U.S. Army Corps of Engineers (Corps) may authorize such activities after obtaining NMFS approval. Additional approvals may be required from the Santa Clara Valley Water District (for the bridge only), the Regional Water Quality Control Board (RWQCB), or the CDFG.

- The number of access routes, number and size of staging areas, and total area of activity shall be limited to the minimum necessary to complete the project. When possible, existing ingress or egress points shall be used and the contours of the work area shall be returned to pre-construction condition or better.

- All fueling and maintenance of vehicles and other equipment, as well as staging areas, shall be located at least 60 feet from the creek. The City shall ensure that the contractor has prepared a plan to allow prompt and effective response to any accidental spills in the riparian corridor. All workers shall be informed of the importance of preventing spills and the appropriate measures to take should a spill occur.

- To control erosion during and after construction activities, the contractor shall implement best management practices (BMPs) in accordance with RWQCB guidelines and the project's Stormwater Pollution Prevention Plan (SWPPP). (also see Mitigation Measure BIO-6c below)

- If either of the work areas will require temporary dewatering by pumping, intakes shall be completely screened with wire mesh not larger than 5 millimeters to prevent steelhead from entering. A NMFS-approved biologist shall capture and relocate any native fish or other vertebrate species found in the work area prior to dewatering. Captured animals shall be relocated to a suitable pool or other location above or below the work area.

Mitigation Measure BIO-2: A preconstruction survey to determine the presence or absence of burrowing owls in the vicinity of the soccer bowl shall be conducted by a qualified biologist no more than 30 days prior to the initiation of any construction on or within 100 feet of the perimeter of the soccer field. If burrowing owls are observed on or near the construction area during these surveys, the City shall implement an exclusion zone (i.e., an area in which no project-related activities are allowed) around the occupied burrow. During the breeding season of February 1 to August 31, exclusion zones shall consist of a 250-foot radius from the nest burrow. No project activity shall occur within the exclusion area until the young have fledged. During the non-breeding season of September 1 to January 31, exclusion zones shall consist of a 160-foot radius from occupied burrows. Passive relocation of owls, involving the exclusion of owls from burrows through the placement of one-way doors into burrow entrances, may be implemented during the non-breeding season, provided that the California Department of Fish and Game (CDFG) has reviewed and authorized the relocation plan.

Mitigation Measure BIO-3: If feasible, all tree removals shall be conducted during the non-breeding season (September through February) to avoid direct impacts to nesting Cooper's hawks and nesting native birds protected by the Migratory Bird Treaty Act. If tree removals are scheduled outside of this period (during the breeding season), a qualified ornithologist shall conduct a preconstruction survey of all trees to be removed to determine if any contain active nests. The preconstruction survey shall be conducted within 15 days prior to the start of work from March through May (since there is higher potential for birds to initiate nesting during this period), and within 30 days prior to the start of work from June through August. If active nests are found, the ornithologist shall determine an appropriately sized buffer around the nest in which no work will be allowed until the young have successfully fledged. The size of the nest buffer will be determined by the biologist in consultation with the CDFG, and will be based to a large extent on the nesting species and its sensitivity to disturbance.

Mitigation Measure BIO-4: Preconstruction surveys for bat roosts shall be conducted in all trees that will be removed or limbed within 30 days of the initiation of such activities. The surveys shall be conducted by a qualified biologist familiar with bat species of the San Jose region, including roosting ecology, range, and seasonality. The biologist shall demonstrate prior experience with bat habitat evaluations, roost surveys, and day-night emergence surveys in California. Surveys shall include an initial daytime habitat assessment and day roost survey, followed by two focused day and night emergence surveys of potential roosts, if necessary. During the habitat assessment and day roost survey, the biologist shall search all trees to be removed or limbed for suitable entry

sites, roost cavities, and crevices, as well as search for day-roosting bats, carcasses, fecal matter, and staining. If there is sufficient evidence that bats may roost in the trees to be removed, the biologist shall conduct two paired day-night emergence surveys of suspected roost sites to determine presence or absence of roosting bats. If no bats are found, the biologist shall summarize the results of the surveys in a letter report and submit it to the City's Environmental Principal Planner for review and approval. If roosting bats are found, the biologist shall prescribe appropriate eviction measures and/or other management techniques prior to tree removals to ensure that no bats are harmed. Such measures shall be described in a mitigation and monitoring plan prepared by the bat biologist and submitted to the City's Environmental Principal Planner and CDFG for approval prior to conducting mitigation activities.

Mitigation Measure BIO-5: The City shall prepare and submit a Notification of Lake or Streambed Alteration application (Form FG2023) to the California Department of Fish and Game (CDFG) for working within the bed and bank of Coyote Creek. The application shall include a Habitat Mitigation Monitoring Plan prepared by a qualified restoration ecologist for any vegetation removal within the riparian corridor. This plan shall be reviewed and approved by the CDFG and implemented by the City. This plan shall also be reviewed and approved by the SCVWD if any of the impacts fall within its jurisdiction. The amount of riparian vegetation trimmed, removed, or disturbed shall be kept to a minimum. Native trees ($\geq$ 6 inches diameter-at-breast-height [dbh]) that are removed shall be replaced at a 3:1 ratio on site using locally native riparian trees. Any revegetation efforts will be completed prior to the rainy season. Plantings shall be monitored by the restoration ecologist for 3-5 years and must demonstrate at least an 80% survival rate. Restoration monitoring reports shall be prepared annually during that period and submitted to the CDFG and the City's Environmental Principal Planner for review and approval. If plant survival falls below 80%, additional plantings will be required with the same 3-5 year monitoring period.

Mitigation Measure BIO-6a: To determine the extent of Corps jurisdiction at the proposed bridge location and storm drain outfalls, a qualified wetland scientist shall delineate waters of the U.S. at these areas using Corps methodology.[1] This delineation shall be verified by the Corps. The delineation waters of the U.S. potentially affected by the bridge shall be based on the final bridge design.

Mitigation Measure BIO-6b: The City shall obtain the appropriate federal and State permits for any construction activities and/or structures located below the OHWM of Coyote Creek. Assuming that the total area impacted would be less than 0.5 acre (21,780 square feet), construction of the pedestrian bridge would likely qualify for authorization under Nationwide Permit (NWP) 14 (Linear Transportation Projects), which regulates "activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the U.S..." Replacement of the storm drain outfalls would likely qualify for authorization under NWP 7 (Outfall Structures and Associated Intake Structures), which regulates "activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or that are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program."

Mitigation Measure BIO-6c: All activities within or adjacent to (i.e., within 50 feet) the Coyote Creek riparian corridor shall implement Best Management Practices (BMPs) and erosion control measures in accordance with Regional Water Quality Control Board (RWQCB) guidelines.

Mitigation Measure BIO-7: Trees removed from the site as part of the proposed project shall be replaced at the ratios listed in below to the maximum extent feasible. Trees planted as mitigation

[1] Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual. Technical report Y-87-1, U.S. Army Engineers Waterways Experiment Station, Vicksburg, Mississippi.

for impacts to riparian habitat will not count towards the mitigation for removal of trees outside of the riparian area.

City of San Jose Tree Replacement Ratios

Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12 - 18 inches	3:1	2:1	none	24-inch box
less than 12 inches	1:1	1:1	none	15-gallon container

x:x = tree replacement to tree loss ratio

CULTURAL RESOURCES – The project could result in significant impacts to buried cultural resources. Implementation of the following measures will reduce those impacts to less than significant levels:

Mitigation Measure CULT-1: Any ground disturbance associated with project activities shall be monitored by a qualified archaeologist. Archaeological monitors must be empowered to halt construction activities at the location of the discovery to review possible archaeological material and to protect the resource while the finds are being evaluated. Monitoring shall continue until, in the archaeologist's judgment, cultural resources are not likely to be encountered. Placement of fill required to achieve the soil cap requirements of the RAP and Master Plan shall be excluded from archeological monitoring.

If deposits of prehistoric[2] or historical archaeological deposits or features, other than deposits/ features associated with the burn ash/dump debris (unless intact), are discovered during project activities, all work within 25 feet of the discovery shall be redirected until the archaeological monitor assesses the situation and provides recommendations. A qualified archeologist shall determine whether deposits are historical resources as defined in Section 15064.5. If these deposits do not qualify as historical resources a determination will be made if they qualify as unique archaeological resources, pursuant to Section 15064.5(3)(c). Adverse effects to archaeological deposits should be avoided by project activities. If such deposits cannot be avoided, they shall be evaluated for their California Register of Historical Resources eligibility. If the resources are not eligible, avoidance is not necessary. If the resources are eligible, they will need to be avoided by adverse effects or such effects must be mitigated. Mitigation may consist of, but is not necessarily limited to, systematic recovery and analysis of archaeological deposits; recording the resource; preparation of a report of findings; accessioning recovered archaeological materials at an appropriate curation facility; and public outreach, such as brochures or displays at libraries and museums. Upon completion of the assessment, the archaeologist shall prepare a report documenting the methods and results, and provide recommendations for the treatment of the archaeological materials discovered. The report shall be submitted to the City of San Jose and the Northwest Information Center.

[2] Prehistoric materials include flaked-stone tools (e.g., projectile points, knives, choppers) or obsidian, chert, or quartzite toolmaking debris; culturally darkened soil (i.e., midden soil often containing heat affected rock, ash and charcoal, shellfish remains, and cultural materials); and stone milling equipment (e.g., mortars, pestles, handstones). Historical materials can include wood, stone, concrete, or adobe footings, walls and other structural remains; debris-filled wells or privies; and deposits of wood, glass, ceramics, and other refuse.

Mitigation Measure CULT-2: In the event that an archaeological monitor is not present and human remains are encountered, work within 25 feet of the discovery shall be redirected and the County Coroner notified immediately. At the same time, an archaeologist will be contacted, if an archaeological monitor is not present, to assess the situation and consult with agencies as appropriate. Project personnel should not collect or move any human remains and associated materials. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. Upon completion of the assessment, the archaeologist shall prepare a report documenting the methods and results, and provide recommendations for the treatment of the human remains and any associated cultural materials, as appropriate and in coordination with the recommendations of the MLD. The City of San Jose, as owner of the will decide the final disposition of the remains, in consultation with the MLD and professional archeologist.

GEOLOGY AND SOILS – The project is located in a seismically-active area, therefore implementation of the project could result in potentially significant geologic impacts. Implementation of the following measures will reduce those impacts to less than significant levels:

Mitigation Measure GEO-1: Project design and construction shall be in conformance with, or exceed, current best standards for earthquake resistant construction in accordance with the California Building Code (Seismic Zone 4), applicable local codes, and in accordance with the generally accepted standards of geotechnical practice for seismic design in Northern California. In addition, building design shall follow the recommendations of a site-specific design-level geotechnical investigation report to be prepared by a Certified Engineering Geologist or Geotechnical Engineer. The City Engineer shall approve all final design and engineering plans.

Mitigation Measure GEO-2: The required site-specific geotechnical investigation for the proposed project will include an evaluation of the potential liquefaction hazards at the project site and recommendations for mitigation of the hazard. Building engineering and design shall follow the recommendations of a site-specific design-level geotechnical investigation report to be prepared by a Certified Engineering Geologist or Geotechnical Engineer. The City Engineer shall approve all final design and engineering plans.

Mitigation Measure GEO-3: All of the recommendations of a final site-specific design-level geotechnical investigation as prepared by a licensed Geotechnical Engineer and approved by the City of San Jose shall be incorporated into all development plans, including recommendations for grading, placement of fill materials, pretreatment of expansive soils, and avoidance of settlement and/or differential settlement of infrastructure and buildings.

HAZARDS AND HAZARDOUS MATERIALS – Implementation of the project will remediate hazardous materials in the site's soil. As described in the Remedial Action Plan and Initial Study, the project includes measures such as air quality monitoring and dust control to protect the public and workers during remediation activities, thereby avoiding potentially significant hazardous material impacts. No further mitigation is required.

HYDROLOGY AND WATER QUALITY – The project will implement standard sediment control best management practices during grading and other earthmoving activities, therefore potential construction period water quality impacts will be less than significant.

The Watson Park Master Plan includes construction of a new pedestrian bridge over Coyote Creek, which could result in hydrology impacts. Implementation of the following measure will reduce potential impacts to less than significant levels:

Mitigation Measure HYD-1: Prior to construction of the bridge, the City shall complete a detailed hydraulic analysis (using the existing HEC-RAS model) to confirm the construction and operation of the proposed pedestrian bridge would not result in a measurable increase in the base flood elevation. If the modeling indicates that the proposed bridge would result in a measurable base flood increase, the bridge will be redesigned until the modeling indicates that placement of the bridge would not cause an impact to flooding.

LAND USE AND PLANNING – The project will not have a significant impact on land use, therefore no mitigation is required.

MINERAL RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

NOISE – Because the project site is located adjacent to residences and a school, construction activities could create significant noise impacts, therefore the following measures will be implemented to reduce noise impacts to less than significant levels:

Mitigation Measure NOI-1a: All construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers.

Mitigation Measure NOI-1b: The project contractor shall place all stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the project site.

Mitigation Measure NOI-1c: The construction contractor shall locate equipment staging in areas that would create the greatest feasible distance between construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction.

Mitigation Measure NOI-1d: Except as otherwise permitted, construction activities shall be restricted to between 7:00 a.m. and 7:00 p.m. Monday through Saturday. No construction shall be permitted on Sundays or federal holidays. To the extent feasible, no noise producing construction activity shall be permitted within 300 feet of the Empire Gardens Elementary School during school hours (from 8:00 a.m. to 2:00 p.m. Monday through Friday) on days when children are in attendance.

Mitigation Measure NOI-1e: The project contractor shall equip all construction workers with personal noise protective equipment to prevent hearing loss pursuant to California Occupational Safety and Health standards.

POPULATION AND HOUSING – The project will not affect population growth, displace residents or create the need for new housing, therefore no mitigation is required.

PUBLIC SERVICES – The project site is already served by public services and will not create the need for additional services, therefore no mitigation is required.

RECREATION – The project will have a beneficial impact on recreational resources by restoring and returning to public use a recreational facility, therefore no mitigation is required.

TRANSPORTATION / TRAFFIC – The project will not have a significant impact on traffic, therefore no mitigation is required.

UTILITIES AND SERVICE SYSTEMS – The project will not have a significant impact on this resource, therefore no mitigation is required.

MANDATORY FINDINGS OF SIGNIFICANCE – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on August 18, 2008 any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or

2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

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Deputy

Adopted on: 9/18/08

Deputy